

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ETHEREUM VENTURES LLC,

Plaintiff.

against-

CHET MINING CO LLC and CHET
STOJANOVICH,

Defendants.

**ATTORNEY AFFIRMATION IN
SUPPORT OF MOTION FOR
DEFAULT JUDGMENT**

Case No.: 1:19-cv-7949 (LLS)

BENJAMIN F. NEIDL, an attorney admitted to practice in this Honorable Court affirms under penalty of perjury the following:

1. I am of counsel to the law firm E. Stewart Jones Hacker Murphy LLP, attorneys for the plaintiff in the above-captioned matter. I respectfully submit this affirmation in support of the plaintiff's motion for a default judgment against both defendants, pursuant to Fed. R. Civ. P. 55(b) and Local Rule 55.2. This affirmation is based upon my personal knowledge.

2. The motion is supported by this affirmation, and the accompanying Declaration of JohnPaul Baric executed June 4, 2021, filed and served simultaneously herewith.

3. This motion is also supported by the following Exhibits annexed hereto:

Exhibit 1: The Complaint filed August 26, 2019;

Exhibit 2: The defendants' Answer filed January 6, 2020;

Exhibit 3: The Court's Memo Endorsement dated February 7, 2020, granting the motion by Venable LLP to withdraw as defendants' counsel;

Exhibit 4: The Court's Order dated January 22, 2021 granting the motion by Morrison Cohen LLP to withdraw as defendants' counsel;

Exhibit 5: The Court's Order dated May 5, 2021;

Exhibit 6: The Clerk's Certificate of Default against both defendants, issued May 25, 2021; and

Exhibit 7: A true and accurate copy of the Attorney Affirmation in support of the plaintiff's application for Clerk's Certificate of Default, filed on May 24, 2021.

4. The circumstances of how the defendants defaulted are set forth in Exhibits 6 and 7. In short, the defendants' initially appeared by filing an Answer through their attorneys at Venable LLP (Exhibit 2). Venable moved to withdraw as defense counsel due to lack of cooperation by the defendants, which the Court granted (Exhibit 3). The defendants retained other counsel at Morrison Cohen LLP, but those attorneys also eventually made a motion to withdraw, which the Court granted (Exhibit 4). The Court ordered the defendants to appear through other counsel within 60 days, or else the plaintiff could seek judgment by default (Exhibits 4 and 5). The defendants have not appeared through other counsel, nor have we heard from the defendants in any way since the Court issued its January 22, 2021 and May 5, 2021 orders (Exhibits 4 and 5). Based on these events, on my application, the Clerk entered a Certificate of Default as to both defendants on May 25, 2021 (see Exhibits 6 and 7).

5. The basis for the claim and the principal damages sought are set forth in the accompanying Declaration of JohnPaul Baric. In short, in 2019 the plaintiff paid the defendants a net amount of \$179,580 to purchase two batches of cryptocurrency mining computers that the defendants never delivered. The plaintiff is entitled to damages equal to that amount. *See* N.Y. UCC §2-711(1)(authorizing a refund of the purchase price as the measure of damages for undelivered goods).

6. The plaintiff is also entitled to pre-judgment interest at a rate of 9% per year, pursuant to N.Y. CPLR §5001. In a diversity jurisdiction case like this, New York's statutory rate of interest of 9% applies. *See Quincy Fire Ins. Co. v. N.Y. Central Mut. Fire Ins. Co.*, 89 F. Supp.3d 291 (N.D.N.Y. 2014).

7. From the date that the plaintiff filed this action (August 26, 2019) to the date of this affirmation (June 4, 2021), a span of 648 days, the accrued pre-judgment interest is \$28,693.44, calculated as follows:

$\$179,580 \times 9\% = \$16,162.20$ interest *per annum* $\div 365 = \$44.28$
interest *per diem*.

$\$44.28$ interest *per diem* $\times 648$ days = \$28,693.44 total interest as of
June 4, 2021.

WHEREFORE, pursuant to Rule 55(b) of the Federal Rules of Civil Procedure and Local Rule 55.2, the plaintiffs hereby requests a default judgment against defendants Chet Mining Co. LLC and Chet Stojanovich, jointly and severally, in the principal amount of \$179,580.00, plus pre-judgment interest accrued through the date of judgment, which is \$28,693.44 as of June 4, 2021.

Dated: June 4, 2021
Schenectady, New York

E. STEWART JONES HACKER MURPHY LLP

By:



Benjamin F. Neidl
SDNY Bar No: BN5818
Attorneys for the Plaintiff
200 Harborside Drive, Suite 300
Schenectady, N.Y. 12305
Tel. No.: (518) 274-5820